IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.983 OF 2007.

Shri Shivaji Ganapati Rote & Ors. ...Appellants

Versus

Shri Ramgonda Babgonda Patil & Ors. ...Respondents

Shri T.S.Ingale for the Appellants.

Shri N.J.Patil for the Respondent Nos.1 & 2.

CORAM : ABHAY S.OKA, J.
DATED : 17th December, 2007.

P.C.:

1. Heard learned advocate appearing for the appellants. The appellants filed a suit for declaration that they are the owners of the suit property. The appellants claim that the suit property is an ancestral property initially held by their grandfather Subrao. The trial Court dismissed the suit and dismissal of the suit by the trial Court has been confirmed in appeal preferred by the appellants. The submission of the learned counsel for the appellants is that the record of rights of the suit property consistently shows that the property was held by Subrao who is the ancestor of the appellants. He pointed out that evidence was led by the appellants to show that Subrao and Sakharam were one and the same person. He submitted that as evidence was led by the appellants to establish the ownership of their

predecessor in title, both the Courts ought to have decided in favour of the appellants.

2. I have considered the submissions made by the learned counsel appearing for the appellants. The finding of the Court below appears to be that the suit property was standing in the name of one Sakharam and the case made out by the appellants that Sakharam and Subrao are one and the same persons has no foundation in their pleadings.

3. Perusal of the plaint shows that the appellants have not at all pleaded that Sakharam was another name of their grandfather Subrao. In absence of this material averment in the plaint, the Courts below were justified in rejecting the oral testimony of the witness of the appellants that Sakharam was another name of Subrao. It must be noted here that the appellants are claiming title through Subrao. In view of the concurrent finding of fact, no substantial question of law arises. Second Appeal is accordingly dismissed with no orders as to costs.

JUDGE